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82-124
No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

ANTHONY CHARLES ROSSANO,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

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QUESTIONS PRESENTED

1. Whether the requirement of 18 U.S.C. §1955(b)(1)(ii) that at least five persons "conduct, finance, manage, supervise, direct or own" an illegal gambling business includes persons whose activities are purely ancillary in nature and do not entail actual involvement in the gambling operation itself.

2. Whether the Government failed to prove the existence of the enterprise charged in the indictment, and that its affairs were conducted through a pattern of racketeering activity.

3. Whether the Government failed to present sufficient evidence to prove that the enterprise charged in the indictment affected interstate commerce as required by 18 U.S.C. §1962(c).

PARTIES TO THE PROCEEDING

The caption of the case contains the names of the parties to the proceeding in this Court.

TABLE OF CONTENTS

	Page
1. Questions Presented	i
2. Parties to the Proceeding	i
3. Opinions Below	1
4. Statement of Jurisdiction	2
5. Statutes Involved	2
6. Statement of the Case	4
7. Reasons for Allowance of the Writ of Certiorari	6
I. There Is A Conflict Among The Federal Courts Of Appeals Concerning An Important Question Of Federal Law Which Has Not Been, But Should Be, Settled By This Court	6
II. The Court Of Appeals Has Rendered A Decision In Conflict With The Applicable Decisions Of This Court And In Conflict With Decisions Of Other Federal Courts Of Appeals	13
III. The Court Of Appeals Below Has Rendered A Decision In Conflict With The Decision Of Another Federal Court Of Appeals	15
8. Conclusion	18
9. Appendices:	
Appendix A	A-1
Appendix B	A-2
Appendix C	A-5

TABLE OF AUTHORITIES

Cases Page

Sanabria v. United States, 437 U.S. 54 (1978) . . . 7, 9

United States v. Becker, 461 F.2d 230 (2d Cir. 1972), vacated on other grounds, 417 U.S. 903 (1974) 7

United States v. Bennett, 563 F.2d 879 (8th Cir.), cert. denied, 434 U.S. 924 (1977) 7, 8, 11

United States v. Boss, 671 F.2d 396 (10th Cir. 1982) 8, 9, 10, 11, 12

United States v. Bourg, 598 F.2d 445 (5th Cir. 1979) 10

United States v. Boyd, 566 F.2d 929 (5th Cir. 1978) 10

United States v. Colacurcio, 659 F.2d 384 (5th Cir. 1981) 7, 8, 11

United States v. Graham, 534 F.2d 1357 (9th Cir. 1976) 10

United States v. Groff, 643 F.2d 396 (6th Cir. 1981) 17

United States v. Hunter, 478 F.2d 1019 (7th Cir.), cert. denied, 414 U.S. 857 (1973) 10

United States v. Manson, 494 F.2d 804 (7th Cir.), cert. denied, 419 U.S. 994 (1974) 10

United States v. Morris, 612 F.2d 483 (10th Cir. 1979) 8, 10

United States v. Nerone, 563 F.2d 836 (7th Cir.), cert. denied, 435 U.S. 951 (1978) . . .14, 15, 16, 17

United States v. Reeder, 614 F.2d 1179 (8th Cir. 1980) 7

United States v. Riehl, 460 F.2d 454 (3d Cir. 1972) 9

United States v. Rone, 598 F.2d 564 (9th Cir.), cert. denied, 445 U.S. 946 (1980) 17

TABLE OF AUTHORITIES—*(Continued)*

United States v. Smaldone, 583 F.2d 1129 (10th Cir.), cert. denied, 439 U.S. 1073 (1979) . . . 8, 10

United States v. Tarter, 522 F.2d 520 (6th Cir. 1975) 10

United States v. Tucker, 638 F.2d 1292 (5th Cir.), cert. denied, 102 S.Ct. 132 (1981) 7, 8, 9, 10, 11

United States v. Turkette, 452 U.S. 576 (1981) 13, 14, 15

Other Authorities

House Report No. 91-1549, 91st Cong. 2d Sess. (1970); 2 U.S. Code Cong. & Adm. News 1970 at 4029 7

Statutes

18 U.S.C. §1955(b)(1)(ii) 6, 7, 8, 9, 12

18 U.S.C. §1962(c) 4, 13, 15

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

A copy of the Judgment and Commitment Order of the United States District Court for the Eastern District of Pennsylvania dated June 17, 1981 is contained in Appendix A. A copy of the Judgment Order of the United States Court of Appeals for the Third Circuit dated May 14, 1982, affirming Petitioner's conviction is contained in Appendix B. A copy of the denial of Petitioner's petition for rehearing by the United States Court of Appeals for the Third Circuit dated June 15, 1982 is contained in Appendix C. These Judgment Orders are as yet unreported.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit sought to be reviewed was entered and dated May 14, 1982. A timely petition for rehearing *en banc* was denied by an order dated June 15, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The United States Code, Pub. L. 91-452, Tit. VIII §803(a), October 15, 1970, 84 Stat. 937, *18 U.S.C. §1955* provides, in pertinent part:

> §1955 Prohibition of Illegal Gambling Businesses
>
> (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.
>
> (b) As used in this section —
>
> (1) "illegal gambling business" means a gambling business which —
>
> (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business.

United States Code, Pub. L. 91-452, Tit. IX §901(a), October 15, 1970, 84 Stat. 942, *18 U.S.C. §1962(c)* provides:

> §1962 Prohibited Activities
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indi-

rectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

STATEMENT OF THE CASE

This is a petition for certiorari arising from the following facts. On April 28, 1981, Petitioner was found guilty in the United States District Court for the Eastern District of Pennsylvania, after a trial by jury, of violating 18 U.S.C. §§1962(c), 1955, 371 and 2. These statutes proscribe the conducting of an enterprise through a pattern of racketeering activity, operation of an illegal gambling business, conspiracy, and aiding and abetting, respectively. The basis for federal jurisdiction of the District Court was 28 U.S.C. §1291.

Petitioner was sentenced on June 17, 1981. The District Court imposed concurrent two year terms of imprisonment for Counts One (1) and Three (3) and a $10,000 fine. On Count Two (2), the Court suspended sentence and placed Petitioner on probation for a period of one month, to run concurrent with the two year prison term. Imposition of the sentence was stayed pending appeal to the United States Court of Appeals for the Third Circuit.

On May 14, 1982, the Court of Appeals entered a judgment affirming Petitioner's convictions. Petitioner's motion for a rehearing *en banc* was denied on June 15, 1982. Petitioner filed a motion to stay issuance of the court's mandate pending application to this Court for writ of certiorari on June 18, 1982. The court below granted the motion on June 30, 1982 and entered an order staying the mandate to July 22, 1982.

The facts of this case are not complicated. Jack Woodman and James Stinsman were police officers working in a special unit of the Philadelphia Police Department that investigated illegal gambling. As part of their job, Woodman and Stinsman cultivated for themselves a reputation as corrupt officers in order to approach Petitioner's co-defendant and obtain payments

for protecting a card game in South Philadelphia. (T4-10).[1]

On July 21, 1978, the officers met with Joseph Lerro in Lerro's jewelry store. At that time, Lerro told Woodman that Petitioner's co-defendant, Frank Narducci, wanted to "do business" with Woodman. (T1-46-47). Woodman reported this conversation to his commanding officer and the FBI and an investigation was commenced.

For the next three months, Officer Woodman made numerous unsuccessful attempts through Lerro to meet Narducci. On November 2, 1978, the first short meeting took place, at which Narducci rebuffed Woodman's attempts to "do business". (Govt. Exhibit 6R-1). Thereafter, other unsuccessful attempts were made to engage in a recorded conversation with Narducci.

The officers were long aware that the card game in question usually was played at two locations, that is, 1153 South 8th Street, and 1214 South 7th Street, in South Philadelphia. However, in early March of 1979, their surveillance revealed for the first time that the card game was being played at a new location, that is, 803 Latona Street in South Philadelphia.

On March 27, 1979, Officers Woodman and Stinsman saw numerous persons enter and exit 803 Latona Street. The officers went into the house and found numerous men gathered around the dining room table, which was strewn with cards and money. Someone shouted "fuzz", and panic errupted. Thereafter, Petitioner and the two officers left the premises to speak outside. (T2-42-43). Petitioner and the officers agreed that the officers would accept $500 for protection of the card game. This payment would occur at Petitioner's place of employment, Floorkrafters Furniture Store, on the next day. From that point on, arrangements were made to pay

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1. T refers to the transcripts of trial. It is followed by the day and page number.

the officers $400 per month in return for allowing the ziginette card game to continue. (Govt. Exhibit 7R-1). The meetings between Petitioner and the officers or several other individuals and the officers, continued until June 23, 1980, at which time the FBI again raided the card game, this time at 1214 South 7th Street. (T3-67). A three count indictment was returned on July 14, 1980 and trial commenced on April 21, 1981.

During trial, the Government attempted to prove as part of its case that at least five persons had "conducted" the ziginette card game as required by 18 U.S.C. §1955-(b)(1)(ii). In addition to Petitioner and co-defendant Narducci, the Government included the following individuals: Angelo Angelucci and Alfred Mazzucca, were alleged doormen. (T3-3, 4-65). John Palumbo and Joseph Pinto, alleged cooks, were observed wearing aprons and preparing food. (T4-66, 4-133-134). Danny Rossano, Petitioner's seventeen year old son, alleged errand boy, was seen going to the corner store and returning with hoagie bags. (T4-152, 153). Joseph Dupoldit, was an alleged trash collector. (T3-58, 59). Adeline Narducci, Susan Narducci, and Marie Baccari, were owners of the premises in which the card games were carried on. (T4-216-218).

Petitioner was convicted on all counts leading ultimately to this petition.

REASONS FOR ALLOWANCE OF THE WRIT OF CERTIORARI

I. THERE IS A CONFLICT AMONG THE FEDERAL COURTS OF APPEALS CONCERNING AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Petitioner respectfully contends that his conviction under 18 U.S.C. §1955, affirmed by the Court of Ap-

peals, is in conflict with the law as expressed in other circuits and that there is a split among the circuits concerning the types of persons to be counted toward the five person requirement of 18 U.S.C. §1955(b)(1)(ii).

An essential element of 18 U.S.C. §1955 is that five or more persons "conduct, finance, manage, supervise, direct or own" an illegal gambling business. 18 U.S.C. §1955(b)(1)(ii).

This Court has defined the term "conduct" as "any degree of participation in an alleged gambling business, except participation as a mere bettor." *Sanabria v. United States*, 437 U.S. 54, 70-71, n. 26 (1978). It includes both the street level employees and management level personnel. H.R. Rep. No. 91-1549, 91st Cong. 2d Sess. (1970); 2 U.S. Code Cong. & Adm. News (1970) at p. 4029. While this definition seems clear on its face, there is substantial confusion among the circuits as to its scope.

The Fifth, Seventh, and Eighth Circuits have ruled that *any* activity, other than mere betting, which is *either* "necessary or helpful" to the gambling operation will be sufficient to include the participants in the five person requirement. *United States v. Becker*, 461 F.2d 230 (2d Cir. 1972), *vacated on other grounds*, 417 U.S. 903 (1974); *United States v. Tucker*, 638 F.2d 1292 (5th Cir.), *cert. denied*, 102 S.Ct. 132 (1981); *United States v. Colacurcio*, 659 F.2d 684 (5th Cir. 1981); *United States v. Bennett*, 563 F.2d 879 (8th Cir.), *cert. denied*, 434 U.S. 924 (1977); *United States v. Reeder*, 614 F.2d 1179 (8th Cir. 1980).

Thus, in *United States v. Tucker, supra*, the Fifth Circuit held that waitresses who served drinks to gamblers, made change for them and delivered telephone messages could be counted toward the five person requirement. In so ruling, the court stated that the test for inclusion was not whether such persons performed a "necessary function" to the gambling operation, but merely whether their participation was "helpful". *Id.* at

1295-96. *Colacurcio*, *Bennett*, and *Reeder*, *supra*, have ruled likewise under similar factual situations.

On the other hand, the Tenth Circuit has recently held in *United States v. Boss*, 671 F.2d 396 (10th Cir. 1982), that while §1955(b)(1)(ii) participants may include both street and management level personnel, those persons must have a function at their level which is necessary to the gambling business and not merely helpful to it. Thus, waitresses who did nothing more than serve drinks to gamblers in the back room of a club could not be counted toward the §1955 five person requirement since such conduct, while helpful, was not a necessary function of the gambling operation. *See also*, *United States v. Morris*, 612 F.2d 483 (10th Cir. 1979); *United States v. Smaldone*, 583 F.2d 1129 (10th Cir.), *cert. denied*, 439 U.S. 1073 (1979).

This is not to say that participation must be literally necessary to the existence of the gambling business. Rather, "necessary function" as defined in *Boss* means that an individual's activity, at whatever its level, must entail some sort of actual involvement in the gambling operation itself. *United States v. Boss*, *supra*, 671 F.2d at 400. Applying this standard to the case before it, the court found that the job of serving drinks to gamblers, without more, was purely ancillary to the operation of the illegal dice game and thus, insufficient for purposes of §1955(b)(1)(ii). The waitresses therefore could not be counted towards the statutory requirement.

The court managed to reconcile its holding, at least in part, with *Tucker* and its progeny by noting that the waitresses in those cases not only served drinks, but also delivered messages, made change for players, and acted as security guards or lookout persons. *United States v. Boss*, *supra*, 671 F.2d at 400, fn. 5. *See*, *United States v. Bennett*, 563 F.2d 879, 883 (8th Cir.), *cert. denied*, 434 U.S. 924 (1977); *United States v. Colacurcio*, 659 F.2d 684, 686 (5th Cir. 1981). At the same time, however, the Tenth Circuit made it quite clear that it disagreed with

these cases to the extent that they had interpreted §1955 to include persons whose activities were merely helpful to an illegal gambling business. *United States v. Boss*, *supra*, 671 F.2d at 400.

The court also distinguished this Court's "any degree of participation" language in *Sanabria v. United States*, 437 U.S. 54, 70-71, n. 26 (1978), by noting that *Sanabria* and all of the cases cited therein, involved prosecutions of distinct bookmaking operations where the task was to determine whether there was a connection between them sufficient to consider them as one under §1955. Furthermore, in *Sanabria* and all the cases cited by it, the gambling operations involved some "actual gambling function necessary to the illegal operation". *United States v. Boss*, *supra*, 671 F.2d at 399. The Tenth Circuit is therefore implying either that the *Sanabria* language does not apply to the factual pattern set in *Boss*, or that the facts in *Sanabria* and the cases cited therein show that this Court's language was not meant to be taken at fact value.

The *Boss* and *Tucker* cases discussed above, demonstrate that there is a split in the circuits concerning what type of activity constitutes "conduct" under §1955(b)(1)(ii) and what standard is to be applied in making that determination. While the Third Circuit has stated generally that all participants except bettors are covered by the statute, *United States v. Riehl*, 460 F.2d 454, 459 (3d Cir. 1972), it has not voiced its opinion on the standard to be applied in a factual setting similar to that of *Boss* and *Tucker*.

Petitioner respectfully submits that the resolution of these conflicts should be made in favor of the reasoning and conclusions set out by the Tenth Circuit in *Boss* for a number of reasons.

First of all, the "necessary function" test as defined by the Tenth Circuit in *Boss* comports with both the statutory language and legislative history of the statute. As stated by the court in *Boss*:

> "The 'conduct, finance' etc. terms of the statute focus on some actual involvement in the gambling operation as our *Smaldone* and *Morris* opinions illustrate. We are convinced that the interpretation conforms to the clear terms of the statute as well as the legislative history of §1955. For although the statute contemplated 'high level bosses and street level employees', it was intended 'to reach only those persons *who prey systematically* upon our citizens and *whose syndicated operations are so continuous and so substantial* as to be of national concern . . .' H. Rep. No. 91-1549, 91st Cong., reprinted in [1970] U.S. Code Cong. & Adm. News 4077 at 4029 (Emphasis added)." *United States v. Boss* 671 F.2d 396, 400 (10th Cir. 1982).

A plethora of cases demonstrate that as a matter of fact, individuals who have been held to "conduct" within the meaning of §1955 engaged in precisely those kinds of activities which are considered "necessary functions" under the *Boss* definition. Thus, dealers, doormen, bouncers, security guards, message runners, linemen, telephone clerks, and collection agents all play roles which are integral functions of the gambling operation. *See* e.g., *United States v. Tarter*, 522 F.2d 520 (6th Cir. 1975); *United States v. Boyd*, 566 F.2d 929 (5th Cir. 1978); *United States v. Bourg*, 598 F.2d 445 (5th Cir. 1979); *United States v. Graham*, 534 F.2d 1357 (9th Cir. 1976); *United States v. Hunter*, 478 F.2d 1019 (7th Cir.), *cert. denied*, 414 U.S. 857 (1973); *United States v. Manson*, 494 F.2d 804 (7th Cir.), *cert. denied*, 419 U.S. 994 (1974).

In no case has a purely ancillary activity which is merely helpful or convenient been held sufficient to amount to "conduct". As mentioned previously, even those cases which purport to reject the necessary function test have presented facts which were sufficient to meet that test. *United States v. Tucker*, 638 F.2d 1292

(5th Cir.), *cert. denied*, 102 S.Ct. 132 (1981) (waitresses also acted as messengers and change makers for bettors); *United States v. Bennett*, 563 F.2d 879 (8th Cir.), *cert. denied*, 434 U.S. 924 (1977) (waitresses conducted bettors in and out of premises); *United States v. Colacurcio*, 659 F.2d 684 (5th Cir. 1981) (waitresses functioned as security guards).

Finally, it must be recognized that while the legislature intended the scope of §1955 to be broad, it did have a limit in mind. To extend the statute to include the countless activities which are merely helpful to a gambling business would elevate even the most trivial conduct to a federal level:

> "To extend the statute further so as to treat as 'conductors' all those involved in some activity merely helpful to a gambling business would federalize prosecution of a host of activities beyond the legislative intent. Moreover, to hold that waitresses in the circumstances of this case could be conductors would mean, of course, that they are subject to conviction of the federal crime (though they need not be charged or convicted to be counted). We are convinced such an interpretation is beyond the intended reach of the statute." *United States v. Boss*, at 400-401.

Even the *Tucker* court realized that to apply a "necessary *or* helpful" test to participants would create serious problems, but declined to define the limits of such a standard. *United States v. Tucker*, 638 F.2d 1292, 1296, n. 8 (5th Cir. 1981).

Applying the standards set out in *Boss* to the present case, it is clear that the Government failed to prove that five persons "conducted" the gambling business as required by §1955.

Assuming that Petitioner, co-defendant Narducci, and the two doormen can be counted as conductors of the business under the necessary function test, none of

the other alleged participants satisfy the test. The cooks, errand boy, and trash collector in this case are no different than the waitresses in *Boss*. None of these individuals engaged in any activity which could be viewed as part of the gambling operation. While their services might have been helpful or convenient, they were purely ancillary to the business and did not amount to "necessary functions".

Likewise, there was no evidence whatsoever that the owners of the three premises in question had anything to do with, or were even aware of what was taking place in the houses. As the Court stated in *Boss*:

> "Mere ownership of the building in which the club was operated by a lessee cannot be held to be ownership of the gambling business, without further proof of actual financial connections and participation in the gambling business . . ." *United States v. Boss*, 671 F.2d 396, 402 (10th Cir. 1982).

The record is completely void of such evidence in this case. Since only four persons at most can be counted towards the five person requirement of §1955, Petitioner's conviction under the statute should have been reversed.

In summary, Petitioner respectfully submits that there is a split in the circuits as to the scope of §1955 (b)(1)(ii) and the proper test to apply in determining whether the five person requirement has been met. Petitioner contends that the confusion on this issue can only be resolved by this Court, and that the reasoning and ruling of *United States v. Boss* is the view that should prevail. Application of the necessary function test to the present case demonstrates that the District Court and the Court of Appeals have failed to apply the correct standard and Petitioner's conviction should therefore be reversed.

II. THE COURT OF APPEALS HAS RENDERED A DECISION IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT AND IN CONFLICT WITH DECISIONS OF OTHER FEDERAL COURTS OF APPEALS.

In Count One, paragraph 2 of the Indictment, Petitioner was charged under 18 U.S.C. §1962(c) with being a member of an enterprise affecting interstate commerce whose purpose was to corrupt the Philadelphia Police Department by offering bribes to police officers. This enterprise was said to be conducted through a pattern of racketeering activity, namely, the bribes themselves. Petitioner submits that the Government failed to prove the existence of an enterprise separate from the acts of racketeering, and that by affirming Petitioner's conviction, the Third Circuit Court of Appeals is in conflict with the law as expressed by this Court in *United States v. Turkette*, 452 U.S. 576 (1981).

United States v. Turkette, supra, this Court ruled that while a RICO enterprise could be either legal or illegal, the Government had to prove its existence as an entity separate and independent from the acts of racketeering:

> "The 'enterprise' is not the 'pattern of racketeering activity'; it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved by the Government." *Id.* at 583.

The enterprise must be proved by evidence of an *ongoing organization* whose members function as a *continuing unit*. Racketeering, on the other hand, is proved by evidence of the predicate offenses committed by the members of the enterprise. *United States v. Turkette, supra*, at 583. While the evidence used to prove one of these elements may "in particular cases" also help to

prove the other, the fact remains that ". . . proof of one does not necessarily establish the other." *Id.*

In the instant case, the Government failed to show the existence of an enterprise as defined in *Turkette*. There was no showing of an ongoing unit structured for the purpose of bribing police aside from the bribery itself. The only evidence of any sort of independent organization related to the ziginette card game. If the Government had chosen to define the ziginette card game as the RICO enterprise, and the acts of bribery as the means by which that enterprise was conducted, then its proof at trial might have conformed to such a charge. But that is not what the Government did. Instead, it charged that the enterprise was an association in fact formed for the purpose of bribing police. In relation to this "enterprise", there was no evidence other than the payment of bribes. Since "the enterprise is not the pattern of racketeering," *United States v. Turkette, supra*, at 2528, it is clear that the Government failed to present sufficient evidence of the enterprise charged in the Indictment.

The Government further charged in Count One, paragraph 3 of the Indictment, that it was "part of the affairs of the enterprise" that the defendants would operate a ziginette card game. Thus, the ziginette card game functioned as a means through which the enterprise was conducted. The evidence, at best, showed only that the enterprise (the association to bribe police) facilitated the ziginette card game. In other words, the order of proof was backwards.

In *United States v. Nerone*, 563 F.2d 836 (7th Cir.) *cert. denied*, 435 U.S. 951 (1978), the Government made a similar error. The Indictment there charged that the enterprise, a mobile home park named Maple Manor, was conducted by the defendants through a casino operation. However, the Government tried its case on the theory that Maple Manor, the enterprise, facilitated the casino operation. The court overturned the

RICO conviction, stated that the word "through" as cited in 18 U.S.C. §1962(c) meant that the enterprise must be conducted by means of the racketeering activities, and not the reverse. *United States v. Nerone, supra,* at 851.

In the instant case, the Government proved, at most, that the gambling enterprise was facilitated by bribery. As in *Nerone,* however, the Indictment did not define the gambling operation as the RICO enterprise, and the Government's proof was backwards. Furthermore, the Government failed to prove that the *bribery* enterprise was facilitated by the ziginette card game or by the bribes themselves. The Government failed to prove this, because it is impossible to prove.

In summary, Petitioner submits that there is no escaping the fact that the enterprise and the racketeering activities in this case are one and the same. The Government's proof did not conform to the enterprise charged and Petitioner's conviction must be reversed under *Turkette* and *Nerone.*

III. THE COURT OF APPEALS BELOW HAS RENDERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER FEDERAL COURT OF APPEALS.

In order to satisfy the requirements of 18 U.S.C. §1962(c), the Government must prove both the existence of an enterprise and its involvement in interstate commerce.

The Government's evidence regarding interstate commerce in this case consisted of the following items:

1. The cards used in the ziginette card game were manufactured out-of-state. (T4-214-216).

2. A man driving a car with New Jersey plates was seen entering 1214 South Seventh Street. (T4-151).

3. Petitioner once drove his wife's car, which had a New Jersey license plate, to a meeting with undercover police officers. (T3-37-38).

4. The Philadelphia Police Department exchanged information with out-of-state law enforcement agencies. (T1-37).

5. Out-of-state telephone calls were made to and from the premises where the card games took place. (T4-210-213).

The law is clear that it is the *enterprise*, and not the racketeering activities, which must affect interstate commerce. *United States v. Nerone*, 563 F.2d 836 (7th Cir.) *cert. denied*, 435 U.S. 951 1978). Furthermore, the enterprise required to affect interstate commerce must be the enterprise *charged*.

Petitioner submits that the Government failed to prove that the enterprise charged was engaged in interstate commerce and that his conviction was therefore in conflict with *United States v. Nerone, supra*.

As emphasized in the previous argument, the enterprise charged in the Indictment is an association in fact to bribe police officers. It is not the ziginette card game. However, the evidence presented by the Government to establish interstate commerce relates only to the ziginette game and is therefore irrelevant to the enterprise charged. Obviously, the origin of the playing cards, the appearance of a man with New Jersey license plates on the premises where the card game is being played and telephone calls made to and from that premises can relate to nothing other than a possible gambling enterprise.

A review of the conversation between Petitioner and Officer Woodman on the day Petitioner drove his wife's car to the meeting likewise reveals that the entire incident was connected directly to the card game since the purpose of the meeting (and indeed of all the meetings)

was to establish protection for the ziginette card game. (Govt. Exhibit 43R-1), T3-37-38). These contacts were part and parcel of the affairs of a gambling operation, which the Government chose not to elect to charge as the RICO enterprise.

The exchange of information between the Philadelphia Police Department and out-of-state agencies is the only factor which has any possible relation to the enterprise charged. Petitioner submits that this evidence is insufficient to satisfy the "minimal" burden of the Government to prove interstate commerce.

In this case, it was the *Police Department* which engaged in interstate commerce by exchanging information with out-of-state agencies. However, for purposes of the RICO statute, it is the *enterprise* charged in the Indictment which must engage in interstate commerce. *United States v. Nerone*, 563 F.2d 836 (7th Cir.), *cert. denied*, 435 U.S. 951 (1978); *United States v. Groff*, 643 F.2d 396 (6th Cir. 1981). The Police Department is not the enterprise. In the instant case, there is no evidence that the enterprise charged engaged in interstate commerce. There is only evidence of the Police Department's interstate connections, and this is insufficient.

In *United States v. Rone*, 598 F.2d 564 (9th Cir.), *cert. denied*, 445 U.S. 946 (1980), the Ninth Circuit interpreted the interstate commerce element of RICO far more broadly. The enterprise was an association in fact to commit extortion through acts of bombing and murder. The court held that interstate commerce could be established merely by showing that the murder victims' business purchased steel manufactured in another state.

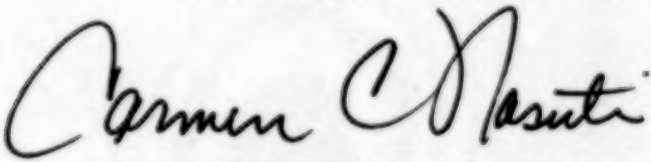
Petitioner respectfully submits that the *Rone* theory is too broad, even for purposes of RICO. The purpose of RICO is to prevent organized crime from infiltrating our economy. In this regard, it is the enterprises's contacts with other states with which the statute is concerned. To carry this concept so far as to say that the *victim's* con-

tacts establish the link of the enterprise to interstate commerce is to attenuate and dilute the requirement to a parody. Even if Congress intended a broad interpretation of RICO, it could not have meant the interstate commerce requirement to be no more than a rubber stamp. Such an interpretation would permit countless minor, borderline cases to be elevated to a federal stature. While Petitioner acknowledges that Congress did not intend to exclude less serious cases from RICO, it must have had some limit in mind. Petitioner's conviction should therefore be reversed.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a Writ of Certiorari should be issued to review the decision of the United States Court of Appeals for the Third Circuit in this case.

Respectfully submitted,



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